

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

**GENESYS HOME HEALTH AND
HOSPICE, INC., and GENESYS
HEALTH ENTERPRISES, INC.¹**

Joint Employers

and

Case 7-RC-22904

**MICHIGAN COUNCIL 25, AMERICAN
FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES (AFSCME),
AFL-CIO**

Petitioner

APPEARANCES:

Eric I. Frankie, of Detroit, MI, for the Petitioner

Fred B. Schwarze and Mark Knoth, of Detroit, MI, for the Employer

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at hearing.

² The Employer and Petitioner filed briefs, which were carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of full-time and regularly scheduled part-time licensed practical nurses (LPNs) employed by Genesys Home Health and Hospice, Inc. at its facility located at 3933 Beecher Road, Flint, Michigan; but excluding all other employees, and guards and supervisors as defined in the Act. The Petitioner did not state its position as to whether Genesys Home Health and Hospice, Inc. and Genesys Health Enterprises, Inc., located at 3909 Beecher Road, Flint, are joint employers. However, one of the five LPNs who Petitioner seeks to represent is employed by the latter employer. In addition, in *Genesys Home Health and Hospice, Inc.*, Case 7-RC-22904, the Petitioner stipulated to a unit of registered nurses employed by both employers as joint employers.

The Employer asserts that the two employees are joint employers and the only appropriate unit must also include other technical employees consisting of physical therapy assistants, biomedical technicians, information system network technicians, and certified respiratory technicians employed by both Employers.

I find that Genesys Home Health and Hospice, Inc. and Genesys Health Enterprises, Inc. are joint employers, based on the interrelationship of operations between them, common ownership and management, and overlapping supervision of employees. Further, I find, based on a community of interest standard, including similar or identical terms and conditions of employment, functional integration among the Employers' departments, and interchange with other employees, that the unit should include all technical employees, not just LPNs. Specifically, the technical unit shall include clinical LPNs, private duty LPNs, physical therapy assistants, biomedical technicians, information system network technicians, and certified respiratory technicians. I additionally find that the community outreach LPN and intake LPNs are not technical employees and are not appropriate for inclusion in this technical unit. Lastly, I find that employee Dean McConnel, who is classified as one of the certified respiratory technicians, is excluded from the unit because he is not employed by either Genesys Home Health and Hospice, Inc., and Genesys Health Enterprises, Inc.

Corporate Structure

Ascension Health, based in St. Louis, Missouri, is the parent corporation to Genesys Health System. Genesys Home Health and Hospice, Inc., (GH3) and Genesys

Health Enterprises, Inc., (GHE) are subsidiaries of Genesys Ambulatory Health Services, which is a subsidiary of Genesys Health System.

Larry Brothers is the President and CEO of GH3 and GHE and Vice President of Genesys Health System. GH3 and GHE each has its own Board of Directors, although the members of both Boards are the same. Six of the seven members of the Boards are employed by Genesys Regional Medical Center, another subsidiary of Genesys Health System.

Genesys Home Health and Hospice, Inc.

GH3 is a nonprofit corporation which provides certified home health services, including nursing and rehabilitation services such as physical therapy, speech therapy, occupational therapy, home health aides, and home hospice services. It also provides hospice services at a residential facility in Goodrich, Michigan.³ GH3 is located at the Genesys Health System West Flint Campus, and its corporate address is 3933 Beecher Road, Flint, Michigan.

GH3 is divided into two operating divisions, the home healthcare division and the hospice care division. Within the home healthcare division are four departments consisting of a clinical department, rehabilitation department, pediatric and social work department, and administrative department. The clinical department, supervised by Rosalind Galloway, includes registered nurses (RNs), LPNs, home health aides and various team associates or clericals. The rehabilitation department, supervised by Rita Ball, includes physical therapists, occupational therapists, speech therapists, physical therapy assistants, and several team associates or clericals. The pediatric and social work department, also described as the Infant Support Services division, is supervised by Carol Osborn, and includes social workers, registered nurses, and several team associates or clericals.

The administrative department is divided into five areas: intake, reimbursement, quality improvement, purchasing, and finance. The intake department, supervised by Deborah Holman, includes registered nurses, and team associates or clericals. The reimbursement department, supervised by Corrine Schlaud, includes the billing and reimbursement staff, and the computer staff or information technologists. The quality improvement department, supervised by Lynn Gray, includes registered nurses who are responsible for quality improvement activities, regulatory issues and education for the staff. The purchasing department, supervised by Lynette Damrau, includes several team associates and inventory control staff. The finance department, supervised by Dawn Hill, includes finance and payroll staff.

³ Petitioner is not seeking to represent, nor is the Employer seeking to include the employees at the Goodrich facility.

The hospice care division of GH3 is separated into two areas: home hospice care and hospice care at a residential facility in Goodrich, Michigan. The home hospice care division is based at the Genesys Health System West Flint Campus, which consists of intake and reimbursement staff, registered nurses, home health aides, spiritual care counselors, and social workers. These employees are supervised by hospice administrator Lavern McCombs.⁴

Genesys Health Enterprise, Inc.

GHE is a for-profit corporation that specializes in home medical equipment services, pharmacy services, home infusion, ambulatory infusion clinics, and other healthcare retail ventures. GHE is also located at the Genesys Health System West Flint Campus, and its corporate address is 3909 Beecher Road, Flint, Michigan.

Within GHE are eight departments: home respiratory department, customer service and intake department, purchasing department, home infusion with pharmacy department, billing and reimbursement department, quality improvement department, private duty department, and finance department. The home respiratory department, supervised by Rebecca Cullen, includes a staff of respiratory therapists, registered respiratory therapists, certified respiratory therapy technicians, home care and delivery staff. The customer service and intake department, supervised by Deborah Holman, also incorporates the retail locations and includes a staff of registered nurses and customer service representatives. The purchasing department is supervised by Lynette Damrau. The home infusion department, supervised by Deborah Holman, employs registered nurses. Within the home infusion department is a pharmacy, which is supervised by Mary Beth Boon-Pajtas.⁵ The billing and reimbursement department is supervised by Corrine Schlaud. The quality improvement department is supervised by Lynn Gray. The private duty department is supervised by Carol Osborn, and provides private duty nursing services with home health aides, registered nurses and licensed practical nurses. The finance department, supervised by Dawn Hill, includes finance and payroll staff.

The West Flint Campus of Genesys Health Systems houses both GHE and GH3. The site was formerly a hospital, which was converted to an ambulatory care and office building. GHE and GH3 have separate addresses within that same building. GHE occupies a warehouse area on the basement or ground floor, and an ambulatory infusion clinic and retail store on the first floor. Its reimbursement department is located on the second and third floor. GH3's home healthcare division is located on the second floor in

⁴ The parties stipulated that Galloway, Ball, Osborn, Holman, Schlaud, Gray, Damrau, Hill, and McCombs direct and assign work, authorize overtime and adjust grievances, and are statutory supervisors, and I so find.

⁵ The parties stipulated that Cullen and Boon-Pajtas direct and assign work, authorize overtime and adjust grievances, and are statutory supervisors, and I so find.

the Two West Wing area of the building. Its home hospice program is located on the third floor. The payroll department for both GHE and GH3 is located on the ground floor. Personnel offices for both GHE and GH3 are located on the first floor. The intake department for both GHE and GH3 is located on the third floor. There are two time clocks located on the ground floor near the employee entrances. Also located on the ground floor is a subletted restaurant space with dining for building visitors and all employees.

Classifications

Licensed Practical Nurses

Intake LPNs: The intake department is responsible for verifying insurance and getting prior authorizations in order to provide equipment or services to patients. Its employees do not engage in any direct patient care. The intake LPNs report to Deborah Holman who is the director of infusion services in the intake department. Holman is employed by GHE. Below her are clinical supervisor Kevin Madaus and supervisor Shirley Stoinski.⁶

The two intake LPNs are Shirley Ikeler and Vicki Lorence. They are employed by GH3. Shirley Ikeler is supervised by Kevin Madaus, who also supervises the RNs in the home infusion department and intake department, as well as the clerical support staff in the intake department. Ikeler makes her days off requests, conveys problems with referrals on orders, and reports day-to-day occurrences to Madaus. Lorence is supervised by Shirley Stoinski, who also supervises the staff in the reimbursement area, document support and the retail stores. Lorence makes her days off requests and reports problems with insurance to Stoinski.

Lorence and Ikeler's duties with respect to intake include completing an intake referral form, containing patient demographics, physician information, diagnosis, services being ordered and insurance information. When that form is completed, it is sent to the reimbursement department for insurance verification. Because of the Employer's participation with Medicare, only a clinician such as an RN, physical therapist, or occupational therapist may authorize a verbal home health order from a physician. If an LPN takes an order, it must be reviewed and signed by an RN.

The intake function does not need to be performed by an LPN; clerical staff also perform intake duties. The clericals take down patient demographics, allergy information, insurance information and the physician's information. However, clericals are not authorized to take home health orders. They can either request that a physician

⁶ The parties stipulated that Madaus and Stoinski direct and assign work, authorize overtime and adjust grievances, and are statutory supervisors, and I so find..

fax in an order, or transfer the call to one of the intake RNs to receive the referral and take the order. Clericals are permitted to take durable medical equipment orders, such as crutches, a walker or a hospital bed. Approximately 50 durable medical equipment orders come in each day, while only 15 to 20 home health orders are received daily.

With respect to the insurance verification aspect of the job, there are three ways insurance is verified. The first is by telephone, directly speaking to someone from the insurance company. The second is through an automated system which requires a patient contract number, and then that patient's benefits level, including co-pays and deductibles, is provided.⁷ The third involves a computer system which also requires a contract number for the benefits level. The insurance verification process does not require any medical training nor does it require much independent judgment. There are approximately five clerical staff and five RNs who also perform insurance verifications. Although, it may be a benefit to have an LPN perform the function because the background knowledge may help with interpreting a nurse's notes and why services need to be continued, LPN status is not a requirement for the job. Part of the job also includes completing an insurance verification form, which documents with whom the employee spoke, what information he/she was told, and authorization information with relevant dates.

Vicki Lorence's job duties include receiving referrals from the intake area, verifying insurance, obtaining prior insurance authorizations and entering the prior authorizations into the computer. She then tracks prior authorizations to determine when they need to be renewed. She sometimes assists with scheduling of employees if the scheduler is unavailable. Lorence spends approximately 90 percent of her working time verifying insurance, four percent performing scheduling tasks, and about six percent assisting with intake. She earns \$19.67 an hour.

Shirley Ikeler, the other intake LPN, is responsible for taking referrals and orders. She is also learning to do telephone assessments for home infusion patients. This entails asking the patient about their illness, medications, frequency of hospitalization, and a brief environmental assessment. The home infusion assessment can also be performed by RNs, and any home infusion assessment completed by Ikeler must be reviewed by an RN. Approximately 85 percent of Ikeler's work is done in intake.

The intake LPNs work on Three South at the West Flint Campus. Ikeler's work area is in a large room with modular furniture and 17 workstations for clerical staff and RNs. Lorence's work area is in a smaller room with about four clerical employees, and also has modular furniture. They all use computers, printers, copy machines, fax machines and alpha mate pagers in performing their tasks. Ikeler works from 8:00 a.m.

⁷ Although the record is not clear, it appears this is an automated telephone system.

to 4:30 p.m. and Lorence works from 7:30 a.m. to 4:00 p.m., Mondays through Fridays, with a rotating Saturday.

Private Duty LPN: Marian Clarambau is a private duty LPN employed by GHE, and is supervised by Trish Curtis Rogers⁸, who in turn reports to Community Service Director Carol Osborn. Clarambau works in the hospice, which is a 24-hour operation. Currently, she is providing admissions services, and is working a reduced schedule of approximately 6 hours per bi-weekly pay period.. She reports to the private duty office located in Two South of the West Flint Campus to pick up paperwork for admissions or to drop off her timecards.

Clarambau's position requires her to be an LPN. Her job duties include going to new patients' homes, obtaining patient demographics information, diagnoses, medications, and developing a plan of care which could include grocery shopping, house-cleaning, and bathing the patient. Clarambau takes direction from the patients and their families as to what services are needed. An RN will review the plan of care with Clarambau, who in turn oversees the home health aide worker following that particular plan of care. Clarambau completes daily progress notes regarding the needs of the patients.

Community Outreach Coordinator LPN: Lynn Hutchinson is employed by GH3 as the Community Outreach Coordinator LPN, and is supervised by Carol Osborn. Hutchinson reports to Osborn two to three times per week. As part of Hutchinson's job, she performs marketing functions at various health fairs, and provides literature and promotional materials about the Employer. She also goes to physicians' offices to educate their staff as to what GH3 and GHE have to offer the community and to offer CPR clinics.

Hutchinson performs her duties throughout Genesee County, North Oakland County and Lapeer County. She travels outside the office to perform her work, but also reports to Two South of the West Flint Campus. She has her own office, near the private duty, pediatric and social work areas. Her work days are Monday through Friday, 8:00 a.m. to 5:00 p.m. She does not use the time clock. She records her time worked on a log which she turns in to Osborn. Hutchinson spends approximately 80 percent of her time outside the office. While in the office, she interacts with many different employees as the marketing education person, and has contact with any department that needs to promote a certain product line. Her marketing/education position does not require her to be an LPN, nor is any specialized training required. She has little to no direct patient care.

⁸ The parties stipulated that Rogers directs and assigns work, authorizes overtime and adjusts grievances and is a statutory supervisor, and I so find..

Clinical LPN: Kathy Howe is a clinical LPN employed by GH3. She is also licensed as a med LPN which permits her to dispense medication. She is supervised by Rhonda Walker⁹, who in turn is supervised by the director of clinical services, Rosalind Galloway. Howe's duties include routine skilled nurse visits in which she provides medical and surgical assessments, wound care, and an overall assessment of the patient's plan of care. She performs her work in patients' homes, and also reports to Two West of the West Flint Campus, usually once each day. While there, she turns in her log which also serves as her timecard. She also downloads information from her laptop computer into the system, and uploads to her laptop patient information for the next day. Her work days are Monday through Friday, with a rotating weekend, from 8:00 a.m. to 5:00 p.m.

As part of her job, Howe regularly updates the primary RN assigned to each patient regarding the patient's status. As part of conducting physical assessments of patients' status, Howe determines whether to contact a physician regarding medications and any wounds. She uses medical equipment, including a stethoscope, blood pressure cuff, thermometer and occasionally a pulse oximeter. Howe is required to keep notes on her laptop of physician's orders and communications with other disciplines providing care to that patient.

Physical Therapy Assistants

Physical therapy assistants work within the rehabilitation department of GH3, and are supervised by Rita Ball. There are currently two physical therapy assistants, Deborah Ruggles and Randy Stambaugh. Both perform the same type of work. Physical therapy assistants take direction from their supervisor and from the physical therapist working with them. There are 20 physical therapists currently employed¹⁰. The physical therapist is responsible for evaluating and assessing the patient, and also sets up the plan of care for the patient. The physical therapy assistants provide direct patient care or interventions to home care patients under the direction of a physical therapist. For example, physical therapy assistants conduct mobility training, day training, pain management, and therapeutic exercises. All of their duties are performed in the patient's home. Physical therapists conduct mobilization techniques, manipulation techniques and electro-stimulation, while physical therapy assistants cannot. The physical therapy assistants assess the appropriateness of the treatment that has been ordered, whether to proceed at the recommended rate, and whether they need to confer with another health professional on the team like a social worker, nurse, or physician. Physical therapy

⁹ The parties stipulated that Walker directs and assigns work, authorizes overtime and adjusts grievances, and is a statutory supervisor, and I so find.

¹⁰ The Petitioner is not seeking to represent the classification of physical therapists, nor does the Employer assert that they are appropriate for this unit. Further, the Board has consistently held that physical therapists are professional employees. *The Mason Clinic*, 221 NLRB 374, 375 (1975)

assistants use standard equipment related to vital signs, including blood pressure cuffs, thermometers and pulse oximeters. In addition, they use ultrasound units, therapeutic exercise equipment, weights and elastic bands.

Physical therapy assistants report to Two West of the West Flint Campus. There is a section at the end of the hallway primarily occupied by the rehabilitation department. While at the West Flint Campus, physical therapy assistants use the computers, transfer patient information, pick up paperwork, discuss issues with the scheduler, discuss patient issues with management, have interdisciplinary contact with the nurses or the social workers, and attend staff meetings. As part of their job, they are required to maintain daily documentation about their patient visits. They also prepare progress notes for the physicians. Both the daily visit notes and the progress notes are kept on a laptop computer, transferred to the agency database, and printed only when needed. While at the West Flint Campus, they interact with supervisors, quality improvement employees, nurses, social workers, other therapists within the department, and team associates or clericals. Physical therapists meet with the physical therapy assistants approximately two or three times a week to discuss patient and work issues. The physical therapy assistants spend approximately ten percent of their work week at the West Flint Campus, while the remainder of their time is spent in the field in patients' homes.

Physical therapy assistants generally work from 8:00 a.m. to 5:00 p.m., Monday through Friday, with some flexibility permitted in scheduling. They are required to earn a two-year associate's degree from an accredited school. GH3 does not require licensure, nor is it required by the state of Michigan. Guidelines under the American Physical Therapy Association are followed by the physical therapy department regarding provisions of services in the home.

Certified Respiratory Technicians

Dean McConnel is the warehouse coordinator, and a certified respiratory technician. He is employed by Genesys Regional Medical Center,¹¹ and is supervised by Lynette Damrau. McConnel works in the warehouse, located in the ground floor of the West Flint Campus. As the warehouse coordinator, he oversees the daily shipping/receiving and inventory needs of the Employer. He also is responsible for trans-filling oxygen cylinders and pulling orders for the nurses of GH3. He is required to complete daily documentation regarding the trans-filling of oxygen, pursuant to FDA regulations.¹² He occasionally works alongside biomedical technicians and assists them with minor repairs. It is not clear from the record whether respiratory technician

¹¹ Because of his many years of employment, McConnel was grandfathered in as an employee of Genesys Regional Medical Center, and never transferred to GH3 or GHE.

¹² Oxygen is categorized as a drug, and thus regulated by the FDA.

certification is required for the warehouse coordinator position. Ken Young is a certified respiratory technician employed by GHE, and supervised by Rebecca Cullen.

Ken Young is a certified respiratory technician, employed by GHE, and supervised by Rebecca Cullen. His position requires a two-year degree and certification through a national exam. As a certified respiratory technician, he works alongside the registered respiratory therapists, who set up and deliver medical equipment and, unlike technicians, can also provide clinical respiratory services. Respiratory therapists and technicians can set up equipment such as apnea monitors and ventilators.

Young completes most of his duties in patients' homes. He sets up, and explains to the patient how to use, the equipment. Young works with oxygen analyzers to assure that the concentration of oxygen is sufficient. He completes notes regarding plans of care and his daily visits. Young reports to the ground floor of the West Flint Campus on a daily basis. While there, he interacts with the warehouse, biomedical and intake employees, as well as other health care employees who are servicing similar or the same patients. For example, if Young is at the home of a patient who is also receiving some skilled nursing or therapy, and a problem is identified, Young calls the nurse or therapist and communicates his findings. Young works Monday through Friday, from 9:00 a.m. to 5:30 p.m., and also rotates his on-call responsibility at the 24-hour emergency service. Both McConnell and Young record their hours on a time clock.

Biomedical Technicians

John Kerr and Ralph Kowalski are both employed as biomedical technicians by GHE, and are supervised by Lynette Damrau. They are required to have an electronics degree in applied science, which is a two-year degree. Their duties are to perform repairs and preventative maintenance on all pieces of equipment that are used by GHE and GH3. This includes oxygen concentrators, mechanical ventilators, hospital beds, infusion pumps, small volume units, and blood pressure cuffs. The biomedical department is located on the ground floor of the West Flint Campus. The biomedical technicians also perform repair and maintenance services at some physicians' offices. The biomedical technicians are required to maintain extensive documentation of their repair work. They use equipment such as specific analyzers, biometric devices, and flow sensing devices. They work Monday through Friday. Kerr works from 7:00 a.m. to 3:30 p.m. Kowalski works from 8:00 a.m. to 4:30 p.m. Both record their hours on a time clock.

Information System Network Technicians

Christine Hammersley and Larry Wright are information system network technicians employed by GH3. They are both supervised by Joseph Gajewski¹³, who in turn reports to director of patient accounting and information systems, Corrine Schlaud. Hammersley's duties include software applications support. She troubleshoots the software applications, which requires deciphering the cause of any particular problem and which route to take in fixing it. Wright focuses more on the hardware aspect of the job, servicing laptops, in-house computers, and other computer equipment. He also performs some functions as they relate to problems with the network, trying to decipher why the network is down and what series of tests to administer to determine the problem. Both Hammersley and Wright prepare written documentation of the service or repair work they perform.

Hammersley and Wright are required to attend training for the two software programs that the Employer uses. They also receive on-the-job training. They are not required to have any specialized schooling or licenses to perform their work. Hammersley and Wright interact with employees who use computer hardware. Hammersley and Wright generally work Monday through Friday, 8:30 a.m. to 5:00 p.m. They may be called in to work outside those hours to perform tasks such as software updates, so that the agency's system is not shut down during business hours. They both use the time clock to record their time worked. They perform their work primarily at the West Flint Campus, and have no patient care responsibilities.

Occupational Therapy Assistants

The Employer has not employed anyone in the occupational therapy assistant classification for more than 2.5 years, and neither party is seeking to include that classification in the unit. Nonetheless, substantial testimony was presented regarding this classification. Because there are currently no occupational therapy assistants, and there have not been for 2.5 years, without making a finding as to the appropriateness of inclusion, I am not including occupational therapy assistants in the unit.

Terms and conditions of employment

GHE and GH3 essentially use the same personnel policy manual, except that the retirement benefits program for GHE is a 401(k) program while the retirement benefits program for GH3 is a 403(b) program because it is a nonprofit organization. Other benefits, such as holidays, vacations, health insurance and life insurance, are the same except that GH3 has longevity benefits. Genesys Health Systems' human resource

¹³ The parties stipulated that Gajewski directs and assigns, authorizes overtime and adjusts grievances, and is a statutory supervisor, and I so find.

department administers the worker's compensation program and some of the payroll tasks for both GHE and GH3.

The physical therapy assistants have a choice of wearing medical scrubs or dressing business casual. The employees in the intake department and the information system network technicians dress business casual. The certified respiratory technicians have the option of dressing business casual or wearing a Genesys polo shirt. The clinical LPN wears medical scrubs. The record does not indicate the dress code or fashion for the private duty LPN and biomedical technicians.

Functional integration and employee interchange

All employees attend informational town hall meetings hosted by Larry Brothers, which provide information about the status of the entire agency.¹⁴ Occasionally, there is crossover between the LPNs and therapists attending the same in-services for continuing education classes. The LPNs and technical employees of GHE and GH3 all earn between \$16 to \$24 per hour.

There is occasional instruction between LPNs and therapy staff. For example, if an LPN visits a patient's home, determines that there is a problem with the patient, and that therapy services should not be provided that day, the LPN calls the therapy office. They then discuss the patient's condition, and decide whether therapy services would be appropriate based on the patient's status.

All classifications have frequent contact with the information system network technicians when problems with their computers arise. There is also daily interaction between the biomedical technicians and certified respiratory technicians. For example, if a certified respiratory technician goes to a patient's home and picks up a piece of equipment because the patient complained that it did not work properly, he or she takes the equipment to the biomedical department. The certified respiratory technician communicates the patient's complaint to allow the biomedical technician to diagnose the problem. Physical therapy assistants have contact with certified respiratory technicians when questions arise about a patient's oxygen equipment or oxygen use. Physical therapy assistants also may have contact with biomedical technicians when going to their department to pick up an ultrasound machine.

Bargaining history

There is no bargaining history in the proposed bargaining unit.

¹⁴ The record is silent with regard to the frequency of town hall meetings.

Analysis

Joint Employer Status of GH3 and GHE

The Board finds that a joint employer relationship exists when two or more employers “co-determine those matters governing essential terms and conditions of employment.” *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3rd Cir. 1982); *W.W. Grainger, Inc.*, 286 NLRB 94 (1987). The essential factor to be examined is whether one employer possesses sufficient control over the work of the employees of another employer. *Boire v. Greyhound Corp.*, 376 U.S. 473, 481 (1964). “There must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction.” *Laerco Transportation*, 269 NLRB 324 (1984).

In the instant case, many aspects of GH3’s and GHE’s business are unified and interrelated. Both are subsidiaries of the same parent companies. Both are engaged in providing health care services, one in the nonprofit sector and the other in the for-profit sector. Both have the same chief executive officer, director of finance, and the same members sitting on their Board of Directors. With respect to labor relations, both GH3 and GHE use virtually the same personnel policies, workers' compensation systems and payroll services. Both operate from the same building, the West Flint Campus, and employees of both use the same time clocks within that building. Supervisors Holman, Damrau, Schlaud, Gray and Osborn supervise departments and employees at both employers. In that regard, the two intake LPNs are employed by GH3, but the director of their department, Deborah Holman, is employed by GHE. Likewise, the private duty LPN is employed by GHE, while her director Carol Osborn is employed by GH3. Moreover, although the petitioner declined to state a position with regard to the joint employer status of GH3 and GHE, it stipulated to such status in a related proceeding, Case 7-RC-22904. Thus, I find that both GH3 and GHE exercise control over substantial terms and conditions of employment of each of their employees and are joint employers. *Flatbush Manor Care*, 313 NLRB 591 (1993); *Brookdale Hospital Medical Center*, 313 NLRB 592 (1993); *Capitol EMI Music*, 311 NLRB 997 (1993); *Windemuller Electric*, 306 NLRB 664 (1992).

Appropriate Unit

Scope

In considering the appropriateness of a bargaining unit, Congress instructed the Board to make unit findings so as “to assure to employees the fullest freedom in exercising the rights guaranteed by this Act.” 29 U.S.C. §159(b). It is axiomatic that nothing in the Act requires a bargaining unit to be the *only*, or the *ultimate*, or the *most*

appropriate grouping. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Capital Bakers*, 168 NLRB 904, 905 (1967); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). A union need not seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible with the union's request does not exist. *Purity Food Stores*, 160 NLRB 651 (1966); *P. Ballantine & Sons*, 141 NLRB 1103 (1963). A union's desire is always a relevant, although not a dispositive, consideration. *E. H. Koester Bakery & Co.*, 136 NLRB 1006 (1962).

As a result of its rulemaking procedures with respect to the health care industry, and in an effort to limit the proliferation of bargaining units in acute care hospitals, the Board found eight separate units appropriate. *Rulemaking*, 53 Fed. Reg. 33900, 248 NLRB 1515 et. seg. (1988). A technical unit, including licensed practical nurses, is one of the appropriate units. A unit of only licensed practical nurses, such as sought by the Petitioner, has been deemed inappropriate. *St. Catherine's Hospital*, 217 NLRB 787 (1975). Although the rulemaking did not specifically extend to nonacute care facilities, the Board has since utilized its findings in formulating the rules, in conjunction with its traditional community of interest inquiry, in determining appropriate units in the nonacute health care context. See *Park Manor Care Center*, 305 NLRB 872 (1991); *Faribault Clinic, Ltd.*, 308 NLRB 131 (1992).

The LPNs and other technical employees enjoy similar terms and conditions of employment, similar working hours, share essentially the same personnel policies and possess similar levels of education. They all report to the West Flint Campus Building. There is functional integration and some interchange among them. Thus, I conclude that a unit limited to LPNs is not appropriate and that a unit including all technical employees is appropriate.

Specific inclusions and exclusions

Technical employees are defined as those "who do not meet the strict requirements of the term 'professional employee' as defined in the Act but whose work is of a technical nature involving the use of independent judgment involving and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses." *Mercy Health Services North*, 311 NLR 1091, 1092, (1993), quoting *Barnert Memorial Hospital Center*, 217 NLRB 775, 777 (1975); *Litton Industries of Maryland*, 125 NLRB 722, 724-725 (1959). Technical employees are those whose specialized training, skills, education, and job requirements establish a community of interest not shared by other service and maintenance employees. Such a separate community of interest is frequently evidenced by the fact that the employee is certified, licensed or registered, although the employee may meet the standard of technical employee without such certification. *Barnert*, supra at 776.

The record evidence shows that the Employer does not require any certification, licensure or specialized training for the intake LPNs and community outreach coordinator LPN. The intake LPNs perform the same work as the Employer's clerical employees working in the same department and physical area, and although there is some benefit inured to the Employer that Ikeler and Lorence are familiar with medical terminology and certain procedures and protocols by virtue of their practical nursing licensure, it is not a requirement and does not transform them to technical employees.¹⁵ *Faribault Clinic*, supra. Similarly, although Hutchison is an licensed practical nurse, her position as community outreach coordinator is one of public relations and education, and while her education and training as an LPN may enhance her performance, it is not one of the criteria for the position. *Id.* See also, *St. Vincent Hospital, LLC*, 344 NLRB No. 71 (April 29, 2005) (an anesthesia technician, who was also an LPN, appropriately included in a unit which specifically excluded LPNs because she was an anesthesia technician and had a community of interest with the other anesthesia technicians.) Accordingly, I find the intake LPNs and community outreach coordinator LPN are excluded from the technical employee unit.

Clarambau, the private duty LPN, and Howe, the clinical LPN, each occupy positions which require LPN licensure. Clarambau currently works in hospice admissions, and exercises independent judgment in meeting with patients and determining appropriate care and follow-up. Howe provides hands-on patient care, including dispensing medication, exercising independent judgment in the process. Thus, the private duty and clinical LPNs are appropriately included in a technical employee unit.

The Employer's other technical employees are the physical therapy assistants, Ken Young, the certified respiratory technician¹⁶, the biomedical technicians, and the information system network technicians. The Employer requires a two-year associate's degree in the specific field of study for the physical therapy assistants, certified respiratory technicians, and biomedical technicians. They exercise independent judgment in executing their duties and are appropriately included in a technical employee unit.¹⁷ With regard to the information system network technicians, although the Employer does

¹⁵ Ikeler is training to do telephone assessments for home infusion patients which may require use of independent judgement. However, she spends less than 15% of her time in such duties, and it is unclear whether the training is pursuant to a cross-training policy or such telephone assessments are an added duty.

¹⁶ I find that Dean McConnell, the warehouse coordinator and a certified respiratory technician, whom the Employer sought to include, is excluded from the unit because he is not employed by either of the employers, but by Genesys Regional Medical Center.

¹⁷ Unlike *San Juan Regional Medical Center*, 307 NLRB 117 (1992), where the Board found that the biomedical technicians were appropriately included in a skilled maintenance unit, the record evidence here establishes a community of interest between the biomedical technicians and other technical employees, and no party is seeking to represent the biomedical technicians in a skilled maintenance or other unit.

not require any specialized schooling or licensing for the position, it mandates specialized training in the two software programs utilized in its processes, and additional on-the-job training. These technicians exercise independent judgment in problem solving and resolution of said problems, testing systems and repairing hardware. A classification may appropriately be included in a technical unit, although specialized licensing or certification is not a requirement. *Mercy Health Services*, supra at 1092; *Barnert*, supra. Accordingly, I find the physical therapy assistants, certified respiratory technicians, biomedical technicians, and information system network technicians are included in the technical employee unit.

Conclusion

In view of the foregoing, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:¹⁸

All full-time and regular part-time technical employees, including private duty licensed practical nurses, clinical licensed practical nurses, physical therapy assistants, certified respiratory technicians, biomedical technicians, and information system network technicians, employed by Genesys Home Health and Hospice, Inc. and Genesys Health Enterprises, Inc., at their facilities located at 3933 Beecher Road, Flint, Michigan, and 3909 Beecher Road, Flint, Michigan; *but excluding* intake licensed practical nurses, community outreach coordinator licensed practical nurses, registered nurses, physical therapists, occupational therapists, other professional employees, team associates, home health aide workers, home care technicians, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 26th day of August , 2005.

(SEAL)

"/s/[Stephen M. Glasser]."

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board
Patrick V. McNamara Federal Building
477 Michigan Avenue –Room 300
Detroit, Michigan 48226

¹⁸ Petitioner stated on the record that if a larger unit was found appropriate, it still wished to proceed with the election. As a different and larger unit was found appropriate herein, Petitioner is accorded a period of 14 days from the date of this Decision and Direction of Election in which to submit to the undersigned an additional showing of interest. If no or insufficient additional showing of interest is submitted, the petition will be dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **September 2, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **September 9, 2005**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.